IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

RSA.No. 539 of 2007(E)

AS.16/2004 of ADDL.SUB COURT, IRINJALAKUDA
OS.209/2001 of MUNSIFF-MAGISTRATE COURT, CHALAKUDY

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APPELLANT/RESPONDENT/PLAINTIFF:

AJU JOHN, S/O. JOHN KANNAMPILLY,
ALATHUR VILLAGE, KUMBIDY DESOM, THRISSUR DISTRICT.

BY ADV. SRI.T.N.MANOJ

RESPONDENT: APPELLANT/DEFENDANT:

MOHANAN,
S/O. LATE PUTHENVEETTIL GOPALAKRISHNAN NAIR
ASTAMICHIRA DESOM, VADAKKUM BHAGAM VILLAGE,
THRISSUR DISTRICT.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

R.S.A. NO. 539 OF 2007

Dated this the 17th day of September, 2007

J U D G M E N T

Plaintiff in O.S. 209/2001 on the file of the Munsiff court, Chalakudy is the appellant. Defendant is the respondent. Appellant approached Munsiff Court seeking a decree for enhancing the rent at the rate of Rs.1,700/- per month. As per the contract, rent payable was Rs.60/-. Respondent resisted the suit on the ground that civil court has jurisdiction to grant a decree fixing the rent and in any event the rent cannot be fixed as sought for. Learned Munsiff relying on the decision of this Court in **George v. State of Kerala** [2000 (2) KLT 933] held that civil court has jurisdiction to fix fair rent in view of the decision of this Court striking off Section 5 of Kerala Building (Lease and Rent Control) Act. Rent was fixed at Rs.500/- per month from 1.12.03. The defendant challenged the decree and judgment before Sub court, Irinjalakkuda as A.S 16/2004. Learned Sub Judge on re-appreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the Second Appeal.

2. Appellant is contending that courts below should have fixed the enhanced rent from the date of institution of the suit and not from 1.12.03, as per the decree dated 18.12.03. Learned counsel appearing for the appellant points out that by the decision of this Court in **Edger Ferus v. Abraham Ittycheria** [2004 (1) KLT 767] though it was subsequently provided that the Rent control court has jurisdiction to fix fair rent and a direction to the civil courts to transfer all pending cases to the Rent control courts for disposal in accordance with Kerala Act 2 of 1965 was issued, it now stands stayed by the Apex court and therefore the earlier decision in **George v. State of Kerala** [2000 (2) KLT 933] is holding the filed and therefore civil court has the jurisdiction. Learned counsel also submitted that when the civil court has jurisdiction and rent was enhanced and fixed at Rs.500/- from 1.12.03, courts below should have fixed the rent atleast from the date of institution of the suit and not on the first day of the month on which the judgment of the trial court was pronounced. Learned counsel argued that even though no cross objection was filed in the first appeal, appellant is entitled to agitate that question in view of Rule 33 of Order XLI of the Code of Civil Procedure.

3. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal. First of all, the the lease agreement between the appellant and respondent does not enable the appellant to get the rent refixed. Even though rent was enhanced by the trial court following the decision of this court in **George v. State of Kerala** [2000 (2) KLT 933] which cannot hold the filed till the later decision in Edger Ferus case is reversed ny a larger Bench of this Court or the Apex court and it is taken that civil court is competent to fix the reasonable rent, appellant is not entitled to contend that the refixation should be from the date of the institution of the suit. It could only be at the discretion of the court. As the trial court exercise the jurisdiction and fixed the rent from 1.12.03 and it was confirmed by the first appellate court and it cannot be said that the discretionary jurisdiction was not properly exercised it cannot be interfered.

As there is no substantial question of law involved in the appeal, it is accordingly dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

vps

ANTONY DOMINIC, JUDGE

OP NO.16383/98

JUDGMENT

5TH SEPTEMBER, 2007